

BEFORE THE ETHICS COMMISSION
FOR THE STATE OF TENNESSEE
AT NASHVILLE

IN RE: MMSL Inc.,
Respondent.

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No. 2008-0012

ASSESSMENT ORDER

This matter came on to be heard by the Commission on April 22, 2008 at its regularly scheduled meeting upon Commission staff's presentation of documentation indicating that Respondent failed to file a semi-annual lobbying expenditure report as required by Tenn. Code Ann. § 3-6-303(a).

FINDINGS OF FACT

Documentation on file with the Commission shows, and the Commission finds, as follows:

1. Registration. Respondent MMSL, Inc., registered as an employer of a lobbyist on May 11, 2007.
2. Semi-annual lobbying expenditure report. MMSL had a duty under the Tennessee Comprehensive Governmental Ethics Reform Act of 2006 ("Act") to file an employer disclosure report ("semi-annual lobbying expenditure report") for the six month period ending September 30, 2007. This report was due to be filed no later than November 15, 2007.
 - a. As of November 15, 2007, MMSL had not filed its second semi-annual lobbying expenditure report.
 - b. On December 5, 2007, Commission staff mailed MMSL a notice of failure to file semi-annual lobbying expenditure report. No response was received from MMSL.
 - c. On March 12, 2008, Commission staff mailed MMSL a Notice of Informal Show Cause hearing.
3. Notice of violation. On March 12, 2008, the Commission sent MMSL by certified mail, return receipt requested, a notice that the Commission intended to consider at its April 22, 2008 meeting assessment of civil penalties against MMSL for failure to file the semi-annual lobbying expenditure report due for the six month period ending September 30, 2007.
 - a. The notice set forth the allegations, the maximum amount of civil penalties that

could be assessed, the date, place, and time of the meeting, and MMSL's opportunity to participate in an informal proceeding at the meeting either by appearing personally or by submitting a sworn statement and documents.

- b. On March 24, 2008, the Commission received a green card in the mail that indicated that the notice had been received.
 - c. In response to the notice, the Commission received a check for seven hundred fifty dollars (\$750) for the failure to file. The semi-annual lobbying expenditure report has not been filed, however.
4. Hearing. MMSL did not appear at the meeting. As of the date of the meeting MMSL had not filed the required semi-annual lobbying expenditure report.¹

CONCLUSIONS OF LAW

The Commission concludes that MMSL had an obligation under the Act to file a semi-annual lobbying expenditure report for the six month period ending September 30, 2007, failed to do so, and had no "good cause" for such failure to file. The Act authorizes the Commission to administratively assess a civil penalty of not more than twenty-five dollars (\$25.00) per day up to a maximum of seven hundred fifty dollars (\$750) if an employer of a lobbyist fails, without good cause, to timely file a semi-annual lobbying expenditure report. Tenn. Code Ann. § 3-6-306 (a)(1)(A)(iii).

The Commission considers the complete failure to respond to the warning and notice concerning the failure to file to be significant. The Commission has taken steps through training, website postings, and notices to help employers of lobbyists to come into compliance with the Act. More than a year and a half has passed since the filing requirements of the Act became effective. The Commission finds that the maximum penalty is appropriate in this case.

This assessment cannot become final until after respondent has been afforded an opportunity for a notice and a hearing. Tenn. Code Ann. § 3-6-107(8). Respondent's failure to participate in the informal assessment process is without prejudice to its rights to a contested case hearing under the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101—4-5-325.

ORDER

It is therefore ORDERED that a civil penalty in the amount of seven hundred fifty dollars (\$750) is assessed against MMSL, Inc. for failure to file a semi-annual lobbying expenditure report.

It is further ORDERED that the Executive Director shall issue this order and file it in the

¹ Note by Commission staff: On April 28, 2008 Commission staff received a check for seven hundred fifty dollars (\$750), dated April 28, 2008 from MMSL for failure to timely file the semi-annual lobbying expenditure report. As of the date of issuance of this order, however, the semi-annual lobbying expenditure report still has not been filed.

Commission's offices.

It is further ORDERED that the Executive Director shall cause to be provided to the respondent, by either personal service, certified mail return receipt requested, or overnight delivery, a copy of this order, and notice of the following:

Respondent's right to seek reconsideration of this order by filing with the Commission, within fourteen (14) days of this order, a written request for reconsideration in the form set forth in the notice;

Respondent's right to initiate a contested case proceeding by filing with the Commission, within thirty (30) days of this order, a petition for a contested case hearing in the form set forth in the notice; and

That in the event of failure to timely file a request for reconsideration or a petition for a contested case hearing the order shall become final and may form the basis for legal action to collect the civil penalty.

SO ORDERED.

Issued this 8th day of May, 2008

TENNESSEE ETHICS COMMISSION

By: _____
Bruce A. Androphy,
Executive Director